



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF M-I-B-M-

DATE: OCT. 12, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a mathematics teacher, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is normally attached to this immigrant classification. *See* § 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director, Nebraska Service Center, denied the petition. The Director found that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of a job offer would be in the national interest.

The matter is now before us on appeal. In her appeal, the Petitioner argues that she satisfies the national interest waiver requirements.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences arts or business. Because this classification normally requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act states, in pertinent part:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

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who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . the Attorney General¹ may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Neither the statute nor the pertinent regulations define the term “national interest.” Additionally, Congress did not provide a specific definition of “in the national interest.” The Committee on the Judiciary merely noted in its report to the Senate that the committee had “focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . .” S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Matter of New York State Department of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that he or she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, a petitioner's assurance that he or she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. *Id.* at 219. Rather, a petitioner must justify projections of future benefit to the national interest by establishing a history of demonstrable achievement with some degree of influence on the field as a whole. *Id.* at 219, n.6.

II. ANALYSIS

The Petitioner received a bachelor of science degree in mathematics from [REDACTED] and a bachelor of science degree in commerce from [REDACTED] both in the Philippines. The record reflects that the Petitioner holds the foreign equivalent of U.S. baccalaureate degrees in

¹ Pursuant to section 1517 of the Homeland Security Act of 2002 (“HSA”), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA “shall be deemed to refer to the Secretary” of Homeland Security. *See also* 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

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mathematics and accounting, and has progressive post-baccalaureate experience as a teacher equivalent to an advanced degree under the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B). Accordingly, the Director found that the Petitioner qualified for classification as a member of the professions holding an advanced degree. The sole issue in contention is whether the Petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest according to the three-pronged analysis set forth in *NYSDOT*.

On appeal, the Petitioner indicates that she also qualifies as an individual of exceptional ability. She challenges that Director's statement that "no representations have been made that [she] has exceptional ability." As the Petitioner is already eligible for the underlying immigrant classification as a member of the professions holding an advanced degree, an additional finding of exceptional ability would serve no meaningful purpose in this matter. Pursuant to section 203(b)(2)(A) of the Act, individuals of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. *NYSDOT*, 22 I&N Dec. at 218, 222. Therefore, whether a given individual seeks classification as an individual of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a national interest waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in her field of expertise.² The national interest waiver is an additional benefit, separate from the classification sought, and therefore eligibility for the underlying classification does not demonstrate eligibility for the additional benefit of the waiver.

A. Substantial Intrinsic Merit

The Petitioner previously taught mathematics in [REDACTED] and the Philippines. At the time of filing, the Petitioner was teaching mathematics at [REDACTED] in Arizona. In August 2015, she began working as a mathematics teacher at [REDACTED] in New Mexico. The Petitioner provided documentation showing that her work as a high school mathematics teacher is in an area of substantial intrinsic merit. Accordingly, the record supports the Director's determination that the Petitioner meets the first prong of the *NYSDOT* national interest analysis.

B. National in Scope

The Director found that the proposed benefit of the Petitioner's work as a school teacher would not be national in scope. With regard to the Petitioner's teaching duties at [REDACTED] and [REDACTED] there is no evidence establishing that the benefits of her work would extend beyond her students and school districts such that they will have a national impact. *NYSDOT* provides examples of employment where the benefits would not be national in scope:

² The regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor.

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For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

Id. at 217, n.3. In the present matter, the Petitioner has not shown the impact of her work as a mathematics instructor beyond the localities where she teaches and, therefore, that her proposed benefits are national in scope. There is no documentary evidence indicating that her work as a school teacher will provide national benefits in the field of education.

In the appeal brief, the Petitioner acknowledges *NYSDOT*'s finding that the impact of a single teacher in one school would not be in the national interest for purposes of waiving the job offer requirement. *Id.* She argues, however, that "even if [her] influence as a teacher [is] limited to [a] specific geographic area, it is not of less value, nor of less benefit to the nation." The Petitioner contends that the letters of support she submitted from former students show the importance of her work as a teacher. While the student testimonials indicate that the Petitioner works in a meritorious occupation, and thus help satisfy the first prong of the *NYSDOT* national interest analysis, they do not establish that her classroom instruction produces benefits that are national in scope.

With regard to following the guidelines set forth in *NYSDOT*, the regulation at 8 C.F.R. § 103.3(c) provides that precedent decisions are binding on all USCIS employees in the administration of the Act. We acknowledge that the Petitioner has contributed to her students' progress in mathematics and serves in an important occupation, but there is no evidence reflecting that her work for local school districts has had, or will have, a national effect. As the Petitioner has not demonstrated the national scope of her work as a mathematics teacher, she does not meet the second prong of the *NYSDOT* national interest analysis.

C. Serving the National Interest

It remains, then, to determine whether the Petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. The Director determined that the Petitioner's impact and influence on her field did not satisfy the third prong of the *NYSDOT* national interest analysis.

The Petitioner submitted academic records, letters confirming her employment history, evidence of her credentials and certifications as a teacher, documentation of her membership in the [REDACTED] and an "Outstanding Dedication Certificate" from her principal at [REDACTED]. University degrees, occupational experience, licenses and professional certifications, membership in associations, and recognition for achievements are elements that can contribute toward a finding of exceptional ability. See 8 C.F.R.

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§ 204.5(k)(3)(ii)(A), (B), (C), (E), and (F), respectively. As individuals of exceptional ability and members of the professions holding an advanced degree are generally subject to the job offer/labor certification requirement, they cannot qualify for a national interest waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in their field. In addition to demonstrating eligibility for the underlying immigrant visa classification, an individual requesting a waiver of the job offer must satisfy the three prongs of the *NYSDOT* national interest analysis. Without evidence demonstrating that the Petitioner's work has affected the field as a whole, employment in a beneficial occupation such as a teacher, therefore, does not by itself qualify her for the national interest waiver. For instance, the Petitioner's "Outstanding Dedication Certificate" from her principal reflects internal recognition at [REDACTED] and is not indicative of her influence on the field of education as a whole.

The Petitioner also provided her 2012 teacher evaluation from [REDACTED] reflecting "meets expectations" for each of the performance standards. The Petitioner, however, does not indicate how the submitted evaluation demonstrates that she has influenced the field to a substantially greater degree than other similarly qualified mathematics teachers and how her specific work has had significant impact outside of the school.

In addition, the Petitioner submitted letters of recommendation from former colleagues, supervisors, students, and parents of students, attesting to her teaching expertise and positive impact on student performance. The references discussed the Petitioner's talent, dedication, and contributions to her schools, but they did not indicate that she has had the wider impact and influence necessary to qualify for the national interest waiver under *NYSDOT*.

For example, the Petitioner's appeal includes a letter of support from [REDACTED] a legislative officer for the city government of [REDACTED] in the Philippines, stating: "I consider [the Petitioner] as one of the best math teacher [*sic*] I ever had. She is brilliant. She possesses excellent knowledge in mathematics. Her teaching technique in mathematics was very spectacular. She was teaching us diligently, very clear and easy to understand." [REDACTED] also discusses the Petitioner's role as a student advisor, but does not describe how her work has affected the field as a whole.

Another former student, [REDACTED] a registered chemical engineer with a business in the Philippines, mentions the Petitioner's "exceptional talent in numbers" and methods for making "problem solving easing and fun." While [REDACTED] further notes that the Petitioner has displayed "dedication and [a] caring attitude for all her students," she does not indicate how the Petitioner's work has altered teaching practices outside of her school district or has otherwise influenced the field of education as a whole.

[REDACTED] a mathematics teacher at [REDACTED] contends "that there is a dire need for mathematics teacher[s] in U.S.A. particularly in New Mexico" and that positions at his school "are hard to fill." Similarly, in her appeal brief, the Petitioner notes "the need for teachers" and explains that "some public schools have some of their math subjects taught by a substitute teacher for a whole school year." The Petitioner further indicates that a lack of qualified teachers can hinder students'

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pursuit of a college degree. The U.S. Department of Labor addresses worker shortages through the labor certification process, and therefore a shortage of qualified professionals alone is not sufficient to demonstrate eligibility for the national interest waiver. See *NYSDOT*, 22 I&N Dec. at 218. [REDACTED] does not offer any examples of how the Petitioner's work has influenced the field as a whole.

The Petitioner argues that she has excelled academically "beyond many teachers" in her field and states that her course records in commerce with a major in accounting were "outstanding." Academic performance alone, as measured by criteria such as grade point average, does not meet the requirements for a national interest waiver. The Petitioner must still demonstrate specific prior achievements in the field that establish her ability to benefit the national interest. *Id.* at 219, n.6. In addition, the Petitioner contends that her expertise in mathematics and the related field of accounting offers students a benefit that serves the national interest. Any statement that a petitioner possesses useful skills or a "unique background," however, relates to whether similarly trained workers are available in the United States and is an issue under the jurisdiction of the U.S. Department of Labor through the labor certification process. *Id.* at 221.

The Petitioner requests that we consider her dedication, the actions she has taken to prepare her students, her volunteer work at school, and the praise offered by former students. While the submitted documentation indicates that the Petitioner is an effective teacher who is highly respected by her students, the record does not show that her work as a middle and high school teacher has influenced the field at a level sufficient to justify a waiver of the job offer requirement. Accordingly, the Petitioner has not demonstrated that she meets the third prong of the *NYSDOT* national interest analysis.

III. CONCLUSION

Considering the letters of support and other evidence in the aggregate, the Petitioner has not established by a preponderance of the evidence that the proposed benefits of her work are national in scope, that she has a past record of demonstrable achievement with some degree of influence on the field as a whole, or that she will otherwise serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. Therefore, the Petitioner has not demonstrated that a waiver of the job offer requirement will be in the national interest of the United States. The burden is on the Petitioner to show eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of M-I-B-M-*, ID# 41197 (AAO Oct. 12, 2016)